IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2403 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD KAISER E HIND MILLS LTD

Versus

MASHURUDDIN TAJUDDIN

Appearance:

1. Special Civil Application No. 2403 of 1992

MR KS NANAVATI for Petitioner No. 1

(MR MH SHAIKH) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr. K.D. Gandhi for Mr.K.S. Nanavati for the petitioner. In this matter,

earlier, learned advocate Mr. Shaikh was appearing for the respondent. After his demise, notice was issued by this court to the respondent MASHURUDDIN TAJUDDIN on 25.8.2004. Said notice has not been received back by the Registry of this Court.

In this petition, the petitioner has challenged the order made by the Labour Court concerned in T. Application No. 913 of 1983 dated 1.6.1991 wherein the labour court concerned has set aside the order of termination and has granted reinstatement with full back wages for the intervening period. This order was challenged by the petitioner before the appellate court being industrial court concerned in Appeal NO. 60 of 1991 which was also dismissed by order dated 20.1.1992 and, thereafter, this petition is filed. At the time of admitting this petition by issuing rule thereon, this court passed the following order on 8.5.1992:

"Rule.

Operation of the impugned order granting back wages is stayed. The learned advocate for the petitioner states that it would be open to the respondent workman to resume duty from 11th May, 1992. The respondent workman is present before this court and the learned advocate for the respondent states that the respondent would resume duty from 11th May,1992. It is clarified that if the petition is ultimately rejected, the petitioner would pay the amount of back wages as may be ordered by this court, with interest."

Thus, while admitting this petition, stay qua back wages alone was granted by this court and no stay against reinstatement has been granted.

Learned advocate Mr. Gandhi for the petitioner raised two contentions. His first contention is that the mill is closed. His second contention is that the respondent workman was a Badli Workman and his service was not terminated by the petitioner but the respondent voluntarily left the job. He also submits that inspite of the efforts made by the petitioner from the very beginning, the respondent has not reported for duty. He also submits that the letter to that effect was sent to the respondent workman and the recognised union but no response was received by the petitioner company and, therefore, it cannot be said that the petitioner has committed any illegality. According to him, it was the fault on the part of the respondent who abandoned the job without any justification. It was his grievance that the Courts below have committed an error in not appreciating

all these aspects and, therefore, the matter would require interference of this court. He also submits that in this case, affidavit has been filed by Shri P.M. Joshi, Manager of the petitioner company dated 4th May, 1992 alongwith Annexure-4/1 to Annexure 4/2, pay slips produced by the respondent himself before the labour court. Statement of working of the respondent has also been produced on record. Copy of the order of the Industrial Court, Gujarat in Misc. Application NO. 13 of 1979 and the salary of the workman concerned. Affidavit in reply has also been filed by the workman against the petition.

At Annexure-A, the petitioner has produced letter addressed to the workman which is dated 14th February, 1984 and copy of acknowledgment and copy of acknowledgment of the said letter given by the union.

I have perused the order passed by the labour court as well as the industrial court. Before the labour court, it was the case of the respondent workman that he was working as a fitter w.e.f. 1981 as a permanent employee; he has been illegally removed because he raised demand for over time from the company though he was ready and willing to report for duty and work. He also contended that on March 5, 1981, he was permanent fitter in weaving department in the Ist Shift. As he joined the Maha Gujarat Mill Mazdoor Union, the Management had relieved him on 26.11.83 by informing that he has been relieved. He submitted approach letter on 5th December, 1983 under section 42(4) of the BIR Act, 1946. He was receiving the amount of casual leave which was not available to the Badli Workman and, therefore, according to him, when his service was terminated, he was permanent fitter in the first shift of the company and without following any procedure prescribed in law, his service was terminated by the company. Reply was filed by the company before the labour court at Exh. 4 denying the averments made by the workman. It was the case of the company before the labour court that the workman was working as a Badli Workman and not as a permanent workman and he was being given the work subject to the availability of the work. It was observed by the labour court that the workman had completed 240 days continuous service; provident fund contribution was being deducted from his wages and he was a permanent workman. Before the labour court, the workman was examined at Exh. 5 and on behalf of the petitioner company, vide Exh. 12, one witness Shri Pravinchandra was examined. The labour court, after considering the averments made by the workman in his statement of claim and the evidence of the

parties as well as the arguments advanced before it, decided the matter. The labour court noted one important aspect that no material or documentary evidence was produced by the company before the labour court to substantiate its defence that the respondent was working as a Badli Workman. No such document was produced on record by the company before the labour court. The labour court, therefore, relied upon the oral evidence of the workman as well as the documentary evidence of the workman namely pay slip produced by the workman for the year 1982-83 as well as the PF Slip. The labour court also considered the letter addressed by the company to the workman as well as the Union, not received by the workman as well as the union. One question was asked to the witness for the petitioner company as to whether the company was prepared to allow the workman to join the duty from the date of termination. In reply to the said question, the witness said that he is not able to say anything on this aspect. Therefore, the labour court come to the conclusion that there is contradictory evidence produced by the mill company before it. In view of that, the labour court has not accepted the plea of the company that the workman was badli workman and not permanent workman. While considering the question of back wages for the intervening period, the labour court considered that the petitioner company was not able to prove by producing any evidence that the workman was gainfully employed elsewhere during the intervening period and, therefore, the labour court set aside the order of termination and granted full back wages for the intervening period.

I have also perused the order of the appellate court. The appellate court discussed in para 6 and 7 of the award the evidence led before the labour court. Relying upon the oral evidence of the workman vide Exh. 5 before the labour court, the appellate court come to the conclusion the workman was appointed on 5.3.1981 in the weaving department as a fitter and he was a permanent workman working with the company prior to the date of termination of his service and no procedure whatsoever was followed by the company before terminating the service of the workman. After appreciating the findings given by the labour court, the industrial court was of the view that the labour court was right in setting aside the order of termination. The Industrial Court also appreciated further fact that two letters alleged to have been addressed by the company to the workman and the union were not received by the workman and the union. The industrial court observed that the postman was not examined to prove the service of those letters on the

workman as well as the union. The industrial court also observed that the witness for the petitioner mill company Shri Pravinchandra is not giving the name of the second fitter. Thus, after considering the entire evidence and the reasoning given by the labour court, the industrial court concluded that the labour court was right in holding that the termination of the service of the workman was illegal and contrary to the procedure as well as the principles of natural justice and, therefore, the labour court was right in setting aside such an order of termination and in doing so, the labour court has not committed any error.

As regards the contention raised by the learned advocate Mr.Gandhi that the respondent was a badli workman and he was not resuming the duties inspite of the offer was made, I am of the view that such contention cannot be accepted for the reason that the same is contrary to the evidence on record before the labour court. From the reasoning given by the labour court, it does appear that the workman was ready and willing to join and work with the company but he was not allowed to resume the duty. In reply to the question put forward by the mill company to the workman, the workman answered in his evidence that he was ready and willing to join but he was not allowed to resume the duty. This finding of fact recorded by the labour court was re-examined, re-appreciated and confirmed by the industrial court. Further, no proof of acnkowledgement of two letters Exh. 13 and 14 was produced by the petitioner company before the labour court and this was also again considered and examined by the industrial court. Therefore, according to my opinion, the labour court as well as the industrial court were right in dealing with the matter and were right in appreciating the evidence on record and for the reasons recorded by the labour court as confirmed by the industrial court, such contention raised by Mr.Gandhi before this Court cannot be accepted. I therefore reject such contention. The material documents produced by the petitioner before this court for the first time cannot be considered and looked into by this court since such material documents were not produced by the petitioner before the labour court. Learned advocate Mr.Gandhi has not been able to explain as to why such material which was available to him was not produced by the petitioner before the labour court and why it is being produced before this court for the first time in this petition under Article 227 of the Constitution of India. According to my opinion, if such material would have been produced by the petitioner before the labour court, then, it would have been appreciated by the labour court and

then reappreciated by the industrial court. Further, production of such material would have given an opportunity to the workman to controvert the same before the labour court. Therefore, in that view of the matter, such documents produced by the petitioner before this Court for the for the first time cannot be looked into. Therefore, according to my opinion, both the courts below have not committed any error in passing the orders in question. Learned advocate Mr. Gandhi has not been able to point out any procedural irregularity or jurisdictional error committed by the Courts below. He has also not been able to point out that the findings recorded by the labour court as confirmed by the industrial court are contrary to the evidence on record or perverse in nature. In view of that, considering the limitations of this court while considering the matter under Article 227 of the Constitution of India, according to my opinion, this court is having limited jurisdiction under Art. 227 and in such limited jurisdiction, this court cannot act as an appellate authority and cannot reappreciate the findings of fact recorded by the labour court and reappreciated by the industrial court and, therefore, there is no substance in this petition and the same is required to be dismissed.

For the reasons recorded hereinabove, this petition is dismissed. Interim relief, if any, shall stand vacated. Rule is discharged. There is no order as to costs.

(H.K. Rathod,J.)

Vyas